

NTSB Order No. EA-5039

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 16th day of May, 2003

Respondent.

OPINION AND ORDER

¹Attached to this opinion and order is an excerpt from the hearing transcript containing the initial decision.

Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 61, an airman certificate application and some supporting records.² For the reasons discussed below, the respondent's appeal will be denied.³

The Administrator's March 13, 2003 Emergency Order of Revocation, as amended on March 21, alleged, among other things, the following facts and circumstances respecting the respondent:

1. At all material times you held, and now hold, Airline Transport Pilot certificate number 002693731.
2. On or about January 11, 2002 you submitted to SimuFlite, Inc. a Form 8710 "Airman Certificate or Rating Application" in which you indicated that you had accumulated 210 hours of IA-Jet Westwind time as of that date.
 - (a) That assertion was fraudulent or intentionally false in that on 1-11-02 you had accumulated no more than 87 hours of IA-Jet Westwind time.
3. On or about February 5, 2003, you submitted to the Administrator documents and records that you tendered as substitute records of your pilot flight experience.
 - (a) Included with those documents was a "Summary of

²FAR section 61.59 provides, in relevant part, as follows:

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

- (a) No person may make or cause to be made:
 - (1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part.
 - (2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part...

³The Administrator has filed a reply brief opposing the appeal.

Flight Hours" indicating, among other things, that you had accumulated 210 hours of IA-Jet Westwind time as of 1-11-02.

- (i) That assertion was fraudulent or intentionally false in that on 1-11-02 you had accumulated no more than 87 hours of IA-Jet Westwind time.

* * * * *

5. As a result of the above you violated 14 CFR 61.59 by making or causing to be made a fraudulent or intentionally false statement in a logbook, record, or report required to be kept, made, or used to show compliance with any requirement for the issuance or exercise the privileges of any certificate, rating, or authorization under 14 CFR Part 61.

The law judge, based on all of the documentary and testimonial evidence, including respondent's testimony in his own defense, concluded that the Administrator had met her burden of showing that respondent had violated the regulation as alleged.⁴ He found that the representations that respondent had 210 flight hours in a Westwind jet were false, that respondent knew they were false, and that the falsifications were material.

Respondent, by counsel, does not on appeal challenge the law judge's determination that the hours claimed were intentionally false. Rather, his appeal is in effect limited to an argument that it does not matter that he lied about some of his flight experience on his certificate application and reconstructed flight time records (for a logbook claimed to have been lost), because he still had enough legitimate flight time to qualify for

⁴To succeed on a charge of intentional falsification, the Administrator must prove that a false statement was knowingly made in reference to a material fact.⁴ Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

a type rating in the Westwind jet. In this connection, he asserts that the 87 hours of IA-Jet flight time the Administrator does not dispute he had when the falsified documents were submitted to SimuFlite was sufficient, since he only needed 25 hours in a Westwind for the rating. Respondent's position, in other words, is that his falsifications were not material and, therefore, the violation finding cannot stand. We disagree.

In the first place, it appears that the respondent is mistaken in his contention about the number of hours he needed for the Westwind jet rating. As the Administrator points out, 25 hours of simulator time would only make an applicant eligible for a check-ride if he were otherwise qualified for, or already held, an ATP certificate. Respondent, however, was also applying for an ATP certificate, and it is far from clear on this record whether he would have had the 1500 hours total flight time needed to qualify for an ATP certificate check-ride unless the 123 falsified hours (210 minus 87) were counted. So the falsifications were certainly relevant to the issue of respondent's qualification both to be administered an ATP check-ride or be issued an ATP certificate and to obtain a type rating.

Second, and more importantly, even if respondent had only needed 25 hours in the Westwind, the false statements as to his flight time would still be material because there was no way for the examiner to tell from the records tendered how many genuine hours he actually had in the Westwind.⁵ Under longstanding Board

⁵For a statement to be material, it need only be capable of

precedent, affirmed in the courts, such an undifferentiated statement of flight time is always material, since the decision to give the check-ride was based on the entire amount of flight time claimed by respondent, not some lesser included, but unspecified, amount. See Administrator v. Cassis, 4 NTSB 555 (1982), aff'd, Cassis v. Helms, 737 F.2d 545 (6th Cir. 1984).⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of revocation are affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

(..continued)
influencing the decision of the agency in making a required determination. Twomey v. NTSB, 821 F. 2d 63, 66 (1st Cir. 1987).

⁶The court in Cassis also agreed with the Board that the false statements "were material because if left intact, they could be used by the appellant to show compliance with other FAA requirements beyond those needed for the ATP certificate" (*Ibid.* at 546).